

UNITED STATES TAX COURT
WASHINGTON, DC 20217

AMAZON.COM, INC. & SUBSIDIARIES,)	
)	
Petitioner,)	
)	
v.)	Docket No. 31197-12.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	
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ORDER REGARDING PROTECTED INFORMATION

On July 26, 2013, petitioner filed with this Court a Motion for Protective Order. On August 30, 2013, respondent filed an objection to petitioner's Motion. Further discussions between the parties and with the Court ensued. As a result of these discussions, the parties filed with the Court on November 1, 2013, a joint status report. Attached to that report was a proposed protective order, whose operative provisions the Court has decided to adopt as proposed.

In light of the foregoing, it is hereby

ORDERED that petitioner's Motion for Protective Order is granted in part, in that discovery shall be subject to the following restrictions, and the following terms and conditions shall govern the treatment of Confidential Information:

1. For purposes of this Order, "Confidential Information" is defined to include the following:

a. All personally identifying information related to each person or entity having an account with any web site operated by Amazon.com, Inc. or its affiliates including, without limitation the name, e-mail address, address,

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phone number, and other information with respect to such person or entity;

b. All information required to be kept confidential by any law or regulation of any government;

c. Agreements and the terms of any such agreements between Petitioner or Respondent (each a "Party" and, collectively, the "Parties") and any third party that contain confidentiality provisions prohibiting disclosure of the agreements or their terms, except to the extent that all applicable consents permitting disclosure are provided;

d. Business analyses, results, data, and reporting information less than five years old or otherwise still in use for business purposes at the time such material is designated as Protected Information, including:

- i. Valuations of tangible and intangible property,
- ii. Pricing analyses,
- iii. Analyses of Petitioner's competitors,
- iv. Analyses of Petitioner's customers,
- v. Analyses of potential acquisitions,
- vi. Analyses of market environments,
- vii. Analyses of potential new categories and product lines, and
- viii. Analyses of other business opportunities.

e. Financial analyses, results, data, reporting information, plans and projections, including:

- i. Financial results segmented by business line (e.g., M.com, Marketplace, Amazon Web Services, etc.),
- ii. Financial results segmented by product category,

- iii. Financial results segmented by product line,
 - iv. Financial results segmented by entity,
 - v. Financial results segmented by cost center,
 - vi. Financial results segmented by geographic location,
 - vii. Budgets,
 - viii. Revenue estimates,
 - ix. Cost/expense estimates, and
 - x. Sales estimates;
- f. Forward-looking strategic plans less than ten years old or otherwise still in use for business purposes at the time such material is designated as Protected Information, including:
- i. Business plans,
 - ii. Analyses of potential acquisitions,
 - iii. Pricing initiatives,
 - iv. Marketing strategies,
 - v. New product initiatives,
 - vi. OI1S,
 - vii. OP2s,
 - viii. NPI s,
 - ix. Multiyear plans,
 - x. Offsite documents, and

xi. Board presentations;

g. Petitioner's non-public technical materials, such as computer code and associated comments and revision histories, pricing and other technical mechanisms and algorithms, database schema and content, architecture documents, inventions, prototypes, related technical and functional documents, application program interfaces, and non-public drafts of such materials;

h. Petitioner's non-public trademark, trade dress, and copyright applications, supporting materials, and related correspondence and briefing;

i. Petitioner's non-public patent applications, supporting materials, and related correspondence and briefing; and

j. Any information that is a trade secret at the time of production.

k. Any additional confidential information agreed by the Parties or, absent agreement, determined by the Court to constitute Confidential Information.

2. The Party to whom an agreement under Paragraph 1(c) is provided will not seek to obtain third-party consent to disclosure without first conferring with the Party producing such agreement.

3. Confidential Information does not include information that is already lawfully in the public domain, or that is made publicly available by, or with the consent of, the designating Party.

4. All documents or information that a Party wishes to designate as Protected Information shall be designated as such by such Party (the "Disclosing Party") by affixing to such Confidential Information a legend stating: **Protected Information Subject to Protective Order, *Amazon.com Inc. v. Commissioner, Tax Court Docket No. 31197-12***. However, inadvertent production of any information not designated as Protected Information shall not itself constitute a waiver of the Disclosing Party's claim of confidentiality as to such information, and the Disclosing Party may thereafter designate such information as Protected Information. Confidential Information may not be designated as Protected Information unless there is good cause for protection of such information.

5. For purposes of this Order, reproductions of, extracts of, and summaries of Protected Information shall be Protected Information to the same extent as the Protected Information to which such reproductions, extracts, or summaries relate.

6. Information originally designated as Protected Information shall not retain that status after any Order of this Court denying such status to it.

7. The Parties may designate as Protected Information information that has previously been produced by or to the Parties in connection with this case or any administrative phase of this case by affixing to such Protected Information the legend described in Paragraph 4 and re-producing such information to the Party who previously received it. Respondent will notify in writing all reasonably known recipients of the previously produced information that the information has been designated as Protected Information and is now subject to this Order and shall not be disclosed to any third party unless in accordance with this Order. Such written notification will include a request that the recipients provide such Protected Information to Respondent's trial counsel to the extent reasonably practicable.

8. If a party believes that information designated or sought to be designated as Protected Information by the producing party does not warrant such designation, either party may move the Court for a determination as to whether the designation is appropriate. Unless otherwise ordered by the Court, the burden rests on the party designating information as Protected Information to establish that the information is Confidential Information and to demonstrate good cause for protection. The Parties will seek to resolve informally any disputes over the designation of a document as Protected Information before seeking the assistance of the Court. Information designated as Protected Information will be treated as such during the resolution of the dispute.

9. Respondent may share Protected Information with employees of the United States Internal Revenue Service ("IRS") pursuant to Respondent's normal procedures for sharing such information internally among IRS employees.

10. Protected Information may be shared with third parties, including expert witnesses, consultants, deponents, interviewees, and other witnesses and individuals as trial counsel deem necessary to assist in the development or

presentation of their respective cases in this proceeding, but only consistent with the following conditions and this Order:

- a. Prior to disclosing Protected Information to any reasonably known competitor of Petitioner or any person currently or previously employed by Amazon or a reasonably known competitor of Petitioner, Respondent shall confer with Petitioner and seek to obtain consent to disclosure of Protected Information. Alternatively, Respondent may seek the Court's guidance by motion.
- b. Before any Protected Information is disclosed to a third party pursuant to this Paragraph 10, the person to whom such Protected Information is to be disclosed shall acknowledge, in writing duly executed and returned to trial counsel seeking to disclose the Protected Information, that he or she has read and understands the terms of this Order and agrees to comply with and be bound by them.
- c. Such writing shall be substantially in the form set forth as Exhibit A to this Order, attached hereto (the "Acknowledgment").
- d. At all times such third party to whom such Protected Information is disclosed shall ensure that the Protected Information is maintained in a secure place and is shown only to persons who either have executed the Acknowledgment or are subject to an Acknowledgment executed by another.
- e. If used in a deposition or interview attended by trial counsel for both parties, or in any other meeting with a third party, Protected Information shall (1) not be used by such third party for any other purpose outside of this litigation, and (2) after such deposition or interview, be maintained by the Parties or, in the event of any other meeting with a third party that is attended by only one Party, by that Party, in a manner to protect the confidentiality of the information.

Upon conclusion of such deposition, interview or other meeting with a third party, the Party conducting the deposition, interview or other meeting shall ensure that the third party shall not retain any document of any kind containing Protected Information.

11. Except as provided in this Order, trial counsel and any such persons to whom Protected Information is disclosed pursuant to Paragraphs 9 or 10 of this Order shall not directly or indirectly disclose any Protected Information or the subject matter or contents thereof to any other person, firm or corporation without further order of the Court, or the consent in writing of the Disclosing Party or its trial counsel.

12. Trial counsel for any Party that discloses Protected Information in accordance with this Order shall retain all signed copies of the Acknowledgment in their files.

13. Protected Information may be included in, or attached to, pretrial filings with the Court, but only in accordance with this Order. The Party wishing to so file Protected Information must, prior to filing, either (1) notify and confer with the opposing Party and reach agreement on appropriate redactions or otherwise move the Court to file such information under seal; or (2') challenge the designation of the information as Protected Information by an appropriate filing with the Court. To the extent the Court's assistance is required under option (1) or (2), the Protected Information shall be lodged with the Court until the matter has been resolved by the Court.

14. In disputes under Paragraphs 8 and 13 regarding the designation of information as Protected Information, the Party claiming that information is Protected Information will bear the burden of proving good cause for protection, unless otherwise ordered by the Court.

15. The Parties and other persons, firms or corporations receiving Protected Information in accordance with this Order shall maintain Protected Information received in accordance with this Order in a secure and safe area and shall exercise the same standard of due and proper care with respect to the storage, custody, use, and dissemination of such information as is exercised by the receiving Party or other person, firm or corporation with respect to its own proprietary or confidential information. Any copies, reproductions, summaries and abstractions shall be subject to the terms of this Order and labeled in the same manner as the Protected Information on which they are based.

16. If Protected Information is disclosed by a Party or any other person to whom it has been disclosed other than in accordance with this Order, then the person responsible for such disclosure must immediately bring all pertinent facts relating

to such disclosure to the attention of trial counsel from whom, or for the Party from whom, the person received such Protected Information. Trial counsel will then notify trial counsel for the Party who produced the Protected Information. Without prejudice to any other rights and remedies of the Disclosing Party, the person responsible for such disclosure shall make every effort to recover the improperly disclosed Protected Information and prevent its further disclosure.

17. If any person having possession, custody or control of any Protected Information receives a subpoena or other process or order to produce such information in another, unrelated proceeding, such person shall notify the Court and trial counsel, except that such person need not notify trial counsel if such notification is prohibited by law or protected by I.R.C. section 6105.

18. As used herein, the term "trial counsel" means attorneys, legal assistants, and administrative staffs of Respondent's counsel, the Office of Chief Counsel for the Internal Revenue Service, or field agents working under the direction of the Office of Chief Counsel in connection with this case, and attorneys, legal assistants, and administrative staffs for Petitioner's outside counsel in this case.

19. Nothing in this Order, nor anything done in compliance with this Order, constitutes a waiver by either Party of the confidentiality of any information or document subject hereto.

20. Within ninety (90) days after the final termination of this action pursuant to I.R.C. section 7481, all documents designated as Protected Information, including extracts or summaries thereof, and all reproductions thereof, shall be returned to the Disclosing Party or shall be destroyed, with the following exceptions: copies of papers submitted to the Court (including exhibits); deposition, hearing, or trial transcripts; and one copy of documents and things produced by the parties or non-parties in this case may be retained by trial counsel. If the materials are destroyed, trial counsel shall within one-hundred twenty (120) days after the final termination of this action I.R.C. section 7481 certify to opposing trial counsel that destruction has taken place.

21. Except as specifically provided herein, the terms, conditions, and limitations of this Order shall survive the termination of this action. The Court retains jurisdiction over the parties and other persons governed by this Order for purposes of modifying this Order or adjudicating any dispute regarding the improper use

or disclosure of Protected Information disclosed under the protections of this Order.

22. Nothing herein shall preclude the Parties from bringing an action or proceeding in another administrative or judicial forum seeking redress for the unwarranted disclosure of Protected Information, or deprive such administrative or judicial forum of jurisdiction over such action or proceeding.

23. The application of this Order is limited to the use of Protected Information during trial preparation. Petitioner will move the Court for a separate order governing all trial practice with respect to Protected Information.

(Signed) Albert G. Lauber
Judge

Dated: Washington, D.C.
November 19, 2013

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

**Amazon.com, Inc. & Subsidiaries v. Commissioner
Tax Court Docket No. 31197-12**

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read, and I understand and agree to comply with and be bound by the Order Regarding Protected Information entered by the United States Tax Court in the above captioned case on [date]. I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt, and I further agree to submit to the jurisdiction of the United States Tax Court for the purpose of enforcing the terms of the Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

Printed name: _____

Signature: _____

Albert G. Lauber
Judge

Dated: Washington, D.C.
November 20, 2013